



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2012-0080; FRL-9704-7]

Approval and Promulgation of Implementation Plans; Tennessee:

Prevention of Significant Deterioration and Nonattainment New Source Review;

Fine Particulate Matter (PM_{2.5})

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve changes to the Tennessee State Implementation Plan (SIP), submitted by the Tennessee Department of Environment and Conservation (TDEC) through the Division of Air Pollution Control to EPA on July 29, 2011. The July 29, 2011, SIP revision modifies Tennessee's New Source Review (NSR) Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) programs. Tennessee's July 29, 2011, SIP revision proposes to incorporate, into the Tennessee SIP, NSR provisions for PM_{2.5} as amended in EPA's 2008 NSR PM_{2.5} Implementation Rule. Also, Tennessee's July 29, 2011, SIP revision makes a corrective and clarifying administrative change to rule 1200-03-09-.01. EPA is approving Tennessee's July 29, 2011, SIP revision because it is consistent with the Clean Air Act (CAA or Act) and EPA regulations regarding NSR permitting.

EFFECTIVE DATE: This rule will be effective [insert 30 days after date of publication in the

Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2012-0080. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the Tennessee SIP, contact Ms. Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Bradley's telephone number is (404) 562-9352; e-mail address: bradley.twunjala@epa.gov. For information regarding NSR, contact Ms. Yolanda Adams, Air Permits Section, at the same address above. Ms. Adams' telephone

number is (404) 562-9214; e-mail address: adams.yolanda@epa.gov. For information regarding the PM_{2.5} NAAQS, contact Mr. Joel Huey, Regulatory Development Section, at the same address above. Mr. Huey's telephone number is (404) 562-9104; e-mail address: huey.joel@epa.gov.

SUPPLEMENTARY INFORMATION:

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I. Background

EPA is taking final action on Tennessee's July 29, 2011, SIP revision to adopt rules equivalent to federal requirements for NSR permitting.¹ Tennessee's July 29, 2011, SIP revision includes changes to Tennessee's Air Quality Regulations, Chapter 1200-03-09 - Construction and Operating Permits, Rule Number .01 - Construction Permits, to adopt federal PSD and NNSR promulgated in the rule entitled "Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM_{2.5})," Final Rule, 73 FR 28321 (May 16, 2008), hereafter referred to as the "NSR PM_{2.5} Rule." Also, Tennessee's July 29, 2011, SIP revision includes clarifying changes to rule 1200-03-09-.01.

¹ Tennessee's July 29, 2011, SIP revision also contains changes to Tennessee Chapter 1200-03-26 - Administrative Fees Schedule provisions. EPA is not proposing action on this part of the submittal as these provisions are not part of the federally-approved Tennessee SIP.

On June 11, 2012, EPA published a proposed rulemaking to approve the aforementioned changes to Tennessee's NSR PSD program. *See* 77 FR 34302. Comments on the proposed rulemaking were due on or before July 11, 2012. No comments, adverse or otherwise, were received on EPA's June 11, 2012 proposed rulemaking. Pursuant to section 110 of the CAA, EPA is now taking final action to approve the changes to Tennessee's NSR PSD program as provided in EPA's June 11, 2012, proposed rulemaking. A summary of the background for today's final action is provided below. For more detail, please refer to EPA's proposed rulemaking at 77 FR 34302.

A. NSR PM_{2.5} Rule

EPA finalized a rule on May 16, 2008, that revised the NSR program requirements to establish the framework for implementing preconstruction permit review for the PM_{2.5} NAAQS in both attainment and nonattainment areas. Specifically, the NSR PM_{2.5} Rule established the following NSR requirements to implement the PM_{2.5} NAAQS: (1) require NSR permits to address directly emitted PM_{2.5} and precursor pollutants; (2) establish significant emission rates for direct PM_{2.5} and precursor pollutants (including sulfur dioxide (SO₂) and nitrogen oxides (NO_x)); (3) establish PM_{2.5} emission offsets; (4) provide exceptions to inhalable particles smaller than or equal to 10 micrometers in diameter (PM₁₀) grandfather policy; and (5) require states to account for gases that condense to form particles (condensables) in PM_{2.5} and PM₁₀ emission limits in PSD or nonattainment NSR permits. Additionally, the NSR PM_{2.5} Rule authorized states to adopt provisions in their nonattainment NSR rules that would allow interpollutant offset trading. *See* 73 FR 28321. States were required to provide SIP submissions

to address the requirements for the NSR PM_{2.5} Rule by May 16, 2011. Tennessee's July 29, 2011, SIP revision addresses the PSD and NNSR requirements related to EPA's May 16, 2008, NSR PM_{2.5} Rule.

1. PM₁₀ Surrogate and Grandfathering Policy

In the NSR PM_{2.5} Rule, EPA required that major stationary sources seeking permits must begin directly satisfying the PM_{2.5} requirements, as of the effective date of the rule, rather than relying on PM₁₀ as a surrogate, with two exceptions.² The first exception is a "grandfathering" provision in the federal PSD program at 40 CFR 52.21(i)(1)(xi). This grandfathering provision applied to sources that had applied for, but had not yet received, a final and effective PSD permit before the July 15, 2008, effective date of the May 2008 final rule. The second exception was that states with SIP-approved PSD programs could continue to implement the Seitz Memo's PM₁₀ Surrogate Policy for up to three years (until May 2011) or until the individual revised state PSD programs for PM_{2.5} are approved by EPA, whichever comes first. On May 18, 2011 (76 FR 28646), EPA took final action to repeal the PM_{2.5} grandfathering provision at 40 CFR 52.21(i)(1)(xi). This final action ended the use of the 1997 PM₁₀ Surrogate Policy for PSD permits under the federal PSD program at 40 CFR 52.21. In effect, any PSD permit applicant previously covered by the grandfathering provision (for sources that completed and submitted a permit application before July 15, 2008)³ that did not have a final and effective PSD permit

² After EPA promulgated the NAAQS for PM_{2.5} in 1997, the Agency issued guidance documents related to using PM₁₀ as a surrogate for PM_{2.5} entitled "Interim Implementation of New Source Review Requirements for PM_{2.5}." John S. Seitz, EPA, October 23, 1997 (the "Seitz memo") and "Implementation of New Source Review Requirements in PM-2.5 Nonattainment Areas" (the "2005 PM_{2.5} Nonattainment NSR Guidance").

³ Sources that applied for a PSD permit under the federal PSD program on or after July 15, 2008, are already excluded from using the 1997 PM₁₀ Surrogate Policy as a means of satisfying the PSD requirements for PM_{2.5}. See 76 FR 28321.

before the effective date of the repeal will not be able to rely on the 1997 PM₁₀ Surrogate Policy to satisfy the PSD requirements for PM_{2.5} unless the application includes a valid surrogacy demonstration. *See* 76 FR 28646. In its July 29, 2011, SIP revision, Tennessee elected not to adopt the grandfathering provision at 40 CFR 52.21(i)(1)(xi), into its PSD regulations. Therefore, Tennessee's July 29, 2011, SIP revision is consistent with federal regulations since it does not contain the repealed grandfathering provision.

2. “Condensable” Provision

In the NSR PM_{2.5} Rule, EPA revised the definition of “regulated NSR pollutant” for PSD to add a paragraph providing that “particulate matter (PM) emissions, PM_{2.5} emissions and PM₁₀ emissions” shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures and that on or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM, PM_{2.5} and PM₁₀ in permits issued. *See* 40 CFR 51.166(b)(49)(vi), 52.21(b)(50)(vi) and “Emissions Offset Interpretative Ruling” (40 CFR Part 51, Appendix S). On March 16, 2012,⁴ EPA proposed a rulemaking to amend the definition of “regulated NSR pollutant” promulgated in the NSR PM_{2.5} Rule regarding the PM condensable provision at 40 CFR 51.166(b)(49)(vi), 52.21(b)(50)(i) and EPA's Emissions Offset Interpretative Ruling. *See* 77 FR 15656. The rulemaking proposes to remove the inadvertent requirement in the NSR PM_{2.5} Rule that the measurement of condensable “particulate matter emissions” be included as part of

⁴ In EPA's June 11, 2012, proposed rulemaking, EPA cited March 12, 2012, as the publication date for the particulate matter emissions correction notice. The correct publication date is March 16, 2012.

the measurement and regulation of “particulate matter emissions.”⁵ Tennessee’s July 29, 2011, SIP revision adopts EPA’s definition for regulated NSR pollutant for condensables (at 40 CFR 51.166(b)(49)(vi)), including the term “particulate matter emissions,” as promulgated in the NSR PM_{2.5} Rule.

On May 1, 2012, the State of Tennessee provided a letter to EPA with clarification of the State’s intent in light of EPA’s March 12, 2012, proposed rulemaking. Specifically, in that letter, the State of Tennessee requested that EPA not approve the term “particulate matter emissions” (at rule 1200-03-09-.01(4)(b)47(vi)) as part of the definition for “regulated NSR pollutant” regarding the inclusion of condensable emissions in applicability determinations and in establishing emissions limitations for PM.

3. Interpollutant Trading.

The NSR PM_{2.5} final Rule authorized states to adopt provisions in their NNSR rules that would allow major stationary sources and major modifications located in areas designated nonattainment for PM_{2.5} to offset emissions increases of direct PM_{2.5} emissions or PM_{2.5} precursors with reductions of either direct PM_{2.5} emissions or PM_{2.5} precursors in accordance with offset ratios contained in the approved SIP for the applicable nonattainment area. The inclusion, in whole or in part, of the interpollutant trading offset provisions for PM_{2.5} is discretionary on the part of the states. In the preamble to the NSR PM_{2.5} Rule, EPA included preferred or presumptive offset ratios, applicable to specific PM_{2.5} precursors, that states may

⁵ The term “particulate matter emissions” includes particles that are larger than PM_{2.5} and PM₁₀ and is an indicator measured under various New Source Performance Standards (NSPS) (40 CFR part 60). In addition to the NSPS for PM, it is noted that states have regulated “particulate matter emissions” for many years in their SIPs for PM, and the same indicator has been used as a surrogate for determining compliance with certain standards contained in 40 CFR part 63, regarding National Emission Standards for Hazardous Air Pollutants.

adopt in conjunction with the new interpollutant trading offset provisions for PM_{2.5}, and for which the state could rely on the EPA's technical work to demonstrate the adequacy of the ratios for use in any PM_{2.5} nonattainment area.⁶

The preferred ratios were subsequently the subject of a petition for reconsideration which the EPA Administrator granted in 2009. As a result of the reconsideration, on July 21, 2011, EPA issued a memorandum entitled "Revised Policy to Address Reconsideration of Interpollutant Trading Provisions for Fine Particles (PM_{2.5})" (hereafter referred to as the "Interpollutant Trading Memorandum"). The Interpollutant Trading Memorandum indicated that the existing preferred offset ratios are no longer considered presumptively approvable and that any precursor offset ratio submitted as part of the NSR SIP for a PM_{2.5} nonattainment area must be accompanied by a technical demonstration showing the net air quality benefits of such ratio for the PM_{2.5} nonattainment area in which it will be applied. Tennessee's July 29, 2011, SIP revision adopts the interpollutant policy but not the preferred trading ratios established in the NSR PM_{2.5} Rule.

II. This Action

Tennessee's July 29, 2011, SIP revision adopts NSR PM_{2.5} Rule provisions into the Tennessee SIP at Chapter 12000-03-09 including: (1) requirement for NSR permits to address directly emitted PM_{2.5} and precursor pollutants; (2) significant emission rates for direct PM_{2.5} and precursor pollutants (SO₂ and NO_x); (3) PSD and NNSR requirements of states to address

⁶ Alternatively, the preamble indicated that states may adopt their own ratios, subject to EPA's approval, that would have to be substantiated by modeling or other technical demonstrations of the net air quality benefit for ambient PM_{2.5} concentrations.

condensable PM in establishing enforceable emission limits for PM₁₀ or PM_{2.5}; (4) PM_{2.5} emission offsets; and (5) optional interpollutant trading provision set forth at 40 CFR 51.165(a)(11). These amendments to the Tennessee rules became state-effective June 27, 2011. Specifically, the SIP revision establishes that the State's existing NSR permitting program requirements for PSD and NNSR apply to the PM_{2.5} NAAQS and its precursors; revise the definitions of "*significant*" at 1200-03-09-.01(4)(b)24(i) and (5)((b)1(x)(I) to establish significant emission rates for direct PM_{2.5} and PM_{2.5} precursors for major modifications at existing sources (as amended at 40 CFR 51.165(a)(1)(x)(A) and 51.166(b)(23)(i)); revise the term "*regulated NSR pollutant*" at 1200-03-09-.01(4)(b)47 and (5)(b)1(xlix) to include PM_{2.5}, recognize PM_{2.5} precursors and include the requirement that condensable emissions be accounted for in applicability determinations and in establishing emissions limitations for PM (as amended at 40 CFR 51.165(a)(1)(xxxvii)(C) and 51.166(b)(49)); and adopt NNSR emission offsets (a ratio of 1:1) for direct PM_{2.5} at 1200-03-09-.01(5)2(v) (as amended at 40 CFR 51.165(a)(9)).

Additionally, Tennessee's July 29, 2011, SIP revision does not include the grandfathering provision at 40 CFR 52.21(i)(1)(ix) promulgated in the NSR PM_{2.5} Rule. Therefore, Tennessee's July 29, 2011, SIP revision is consistent with federal regulations. The July 29, 2011, SIP revision adopts the elective interpollutant trading provision policy at 1200-03-09(5)(b)2.(v)(XV) set forth at 40 CFR 51.165(a)(11) for the purpose of offsets under the PM_{2.5} NNSR program. Pursuant to EPA's July 21, 2011, Interpollutant Trading Memorandum, the preferred precursor offset ratios included in the preamble to the NSR PM_{2.5} Rule are no longer considered presumptively approvable. Therefore, any precursor offset ratio submitted to EPA for approval as part of the NSR SIP for a PM_{2.5} nonattainment area must be accompanied by a technical

demonstration showing the suitability of the ratios for that particular nonattainment area.

Tennessee's adoption of the interpollutant trading policy and not the trading ratios does not in any way allow a major stationary source or major modification in the State to obtain offsets through interpollutant trading, nor does it affect the approvability of Tennessee's July 29, 2011, SIP revision.⁷

Regarding the condensable provision, in light of Tennessee request in its May 1, 2012, letter and EPA's intention to amend the definition of "regulated NSR pollutant" as discussed in the correction rulemaking,⁸ EPA is not taking action to approve the terminology "particulate matter emissions" into the Tennessee SIP (at 1200-03-09-.01(4)(b)47(vi)) for the condensable provision in the definition of "regulated NSR pollutant." EPA is, however, taking final action to approve into the Tennessee SIP at 1200-03-09-.01(4)(b)47(vi) the remaining condensable requirement at 40 CFR 51.166(b)(49)(vi), which requires that condensable emissions be accounted for in applicability determinations and in establishing emissions limitations for PM_{2.5} and PM₁₀.

TDEC's July 29, 2011, SIP revision also makes an administrative change to Chapter 1200-03-09 for PSD and NNSR including removing the sentence "For example, if a project involves both an existing emissions unit and a Clean Unit, the projected increase is determined

⁷ If a major stationary source or source with a major modification in Tennessee requests to obtain offsets through interpollutant trading, the State of Tennessee would first be required, consistent with the requirements of section 51.165(a)(11), to revise its SIP to adopt appropriate trading ratios. Tennessee would need to submit to EPA a technical demonstration showing how either the preferred ratios established in the NSR PM_{2.5} Rule or the State's own ratios are appropriate for the State's particular PM_{2.5} nonattainment as well as a revision to the NSR program adopting the ratios into the SIP. EPA would then have to approve the demonstration and ratios into the Tennessee SIP prior to any major stationary source or major modification obtaining offsets through the interpollutant trading policy.

⁸ On March 16, 2012, EPA proposed to correct the inadvertent inclusion of "particulate matter emissions" in the definition of "regulated NSR pollutant" as an indicator for which condensable emissions must be addressed. *See* 77 FR 75656. The comment period for this proposed rulemaking ended May 15, 2012.

by summing the values determined using the method specified in paragraph (a)(7)(iv)(c) of this section for the existing unit and determined using the method specified in paragraph (a)(7)(iv)(e) of this section for the Clean Unit.” from the State’s hybrid test applicability provision at 1200-03-09-.01(4)(c)4(vi) and 1200-03-09-.01(5)(b)2(xvii). Tennessee proposed this change to be consistent with federal language amended in the June 13, 2007, final rulemaking regarding the vacated portions of the 2002 NSR Reform Rule.⁹ See 72 FR 32526. This final action approves the aforementioned SIP amendments into Tennessee’s SIP to provide for the implementation of PM_{2.5} NAAQS in the State’s NSR permitting program.

III. Final Action

Pursuant to section 110 of the CAA, EPA is taking final action to approve Tennessee’s July 29, 2011, SIP revisions adopting federal regulations amended in the NSR PM_{2.5} Rule to implement the PM_{2.5} NAAQS for the NSR program. EPA is also taking final action to approve corrective and clarifying administrative changes to Tennessee’s regulations because they are consistent with section 110 of the CAA and its implementing regulations.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR

⁹ On June 13, 2007, EPA took final action to revise the 2002 NSR Reform Rules to remove from federal law all provisions pertaining to clean units and the pollution control projects exemption that were vacated by the United States Court of Appeals for the District of Columbia Rule. *New York v. United States*, 413 F.3d 3 (D.C. Cir. 2005). See 72 FR 32526. EPA’s efforts to remove the vacated provisions included removing the language from the hybrid test applicability provision at 40 CFR 51.166(a)(7)(iv)(f), 51.165(f)(6) and 52.21(a)(2)(iv)(f).

52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule

or action. This action may not be challenged later in proceedings to enforce its requirements.

(See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference,
Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements and
Volatile organic compounds.

Dated: July 16, 2012

A. Stanley Meiburg
Acting Regional Administrator,
Region 4.

Therefore, 40 CFR part 52 is amended as follows:

PART 52-[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 et seq.

2. Section 52.2220 (c) is amended under Chapter 1200-3-9 by revising the entry for “Section 1200-3-9-.01” to read as follows:

§52.2220 Identification of plan

* * * *

(c) * * *

Table 1 - EPA Approved Tennessee Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
**	**	*	*	*
Chapter 1200-3-9 Construction and Operating Permits				

Section 1200-3-9-.01	Construction Permits	6/27/11	<p>[Insert date of publication in <u>Federal Register</u>]</p> <p>[Insert citation of publication]</p>	<p>EPA is approving Tennessee's July 29, 2011, SIP revisions to Chapter 1200-3-9-.01 with the exception of the term "particulate matter emissions" at 1200-03-09-.01(4)(b)47(vi)) as part of the definition for "regulated NSR pollutant" regarding the inclusion of condensable emissions in applicability determinations and in establishing emissions limitations.</p> <p>EPA is approving Tennessee's May 28, 2009, SIP revisions to Chapter 1200-3-9-.01 with the exception of the "baseline actual emissions" calculation revision found at 1200-3-9-.01 (4)(b)45(i)(III), (4)(b)45(ii)(IV), (5)(b)1(xlvii)(I)(III) and (5)(b)1(xlvii)(II)(IV) of the submittal.</p>
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[FR Doc. 2012-18393 Filed 07/27/2012 at 8:45 am; Publication Date: 07/30/2012]